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No. ~~889~~ 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960 ~~61~~ 62

REPUBLIC NATIONAL BANK OF DALLAS,
Appellant,

vs.

C. H. LANGDEAU, RECEIVER FOR
I. C. T. INSURANCE COMPANY,
Appellee.

Appeal from the Supreme Court of Texas

APPELLEE'S MOTION TO DISMISS APPEAL

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No. 969

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Comes now C. H. LANGDEAU, RECEIVER FOR I. C. T. INSURANCE COMPANY, appellee, and respectfully moves the Court to dismiss this appeal on the ground that the judgment from which Republic National Bank of Dallas, appellant, seeks to appeal in this cause is not a final judgment within the provisions of Title 28, U.S.C., Sec. 1257.

This is an appeal from an interlocutory determination of venue in an action by the state appointed receiver of a defunct insurance corporation against appellant and other defendants. Further details of prior proceedings are set out in appellant's Jurisdictional Statement and need not be repeated here.

Pursuant to state practice, there has been absolutely no determination of any aspect of the merits of this cause. The sole and only issue that has thus far been passed upon in this cause is that of venue.

It is well settled that this Court is not bound by state practice in determining the finality of a judgment of a state court for purposes of determining jurisdiction on appeal. It is also well settled that the judgment appealed from must be an effective determination of the litigation, subject to no further review or correction, and not a determination of a merely interlocutory step in the proceeding. *Market Street Railway Co. vs. Railroad Commission of the State of California*, 324 U.S. 548, 89 L. Ed. 1171, 65 Sup. Ct. 770; *Arnold vs. United States for the use of W. B. Guimarin & Co.*, 263 U.S. 427, 68 L. Ed. 371, 44 Sup. Ct. 144. In dismissing for want of jurisdiction the writ of error in the Arnold case, this Court succinctly stated:

> ". . . A case may not be brought here by writ of error or appeal in fragments: . . . to be reviewable a judgment or decree must be not only final, but complete; that is, final not only as to all the parties, but as to the whole subject matter and as to all the causes of action involved; and . . . if the judgment or decree be

thus final and complete, the writ of error or appeal must be dismissed for want of jurisdiction."

It is respectfully submitted that the case at bar does not meet the tests of jurisdiction as heretofore established by this Court and by the Federal Statutes.

This cause in its entirety involves in excess of one hundred parties, only one of whom is involved in the instant appeal. It is highly conceivable that other questions of federal import will be raised in a trial on the merits of the cause, either by appellant or other parties to the suit. To try one fragmentary part of the entire proceeding at this time would be militate against the rules heretofore laid down by this Court respecting piecemeal review. *Montgomery Building and Construction Trades Council vs. Ledbetter Erection Company, Inc.*, 344 U.S. 178, 97 L. Ed. 204, 73 Sup. Ct. 196; *Republic Natural Gas Co. vs. Oklahoma*, 334 U.S. 62, 92 L. Ed. 1212, 68 Sup. Ct. 972.

Furthermore, should appellant be successful in obtaining a judgment in its favor on the merits of this cause, appellant would undoubtedly acquiesce in the original determination of the venue issue. *Republic Natural Gas Co. vs. Oklahoma*, supra.

Appellant's argument that the venue question may become moot if not reviewed by the Court at this time is effectively dealt with in this Court's opinion in *Montgomery*, supra, where the Court stated:

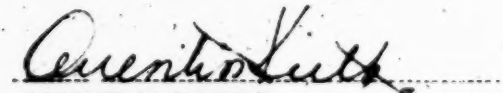
"It is argued that if this is not held to be a final decree or judgment and decided now, it may never be decided, because to await the outcome of the final hearing is to moot the question and to frustrate the picketing. However appealing such argument may be, it does not warrant us in enlarging our jurisdiction. Only Congress can do that."

It is, therefore, submitted that appellant has failed to demonstrate this Court's jurisdiction in the instant appeal and falls within the language of this Court's opinion in the *Republic Natural Gas Co.* case, supra, to-wit:

"Appellant, of course, has the burden of affirmatively establishing this court's jurisdiction." (Citing authorities). "The policy against premature constitutional adjudication demands that any doubts in maintaining this burden be resolved against jurisdiction."

WHEREFORE, appellee respectfully submits that this appeal should be dismissed for want of jurisdiction.

Respectfully submitted,



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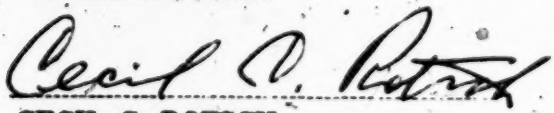

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Proof of Service

I, Cecil C. Rotsch, attorney for C. H. Langdeau, Receiver for I. C T. Insurance Company; appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 7. day of June, 1961, I served copy of the foregoing Motion to Dismiss Appeal on appellant thereto, by mailing copies in a duly addressed envelope, with first-class postage prepaid, to the attorneys of record for Republic National Bank of Dallas, appellant, as follows:

Neth L. Leachman, Esq
1600 Republic National Bank Bldg.
Dallas 1, Texas.

The above attorney upon whom service is to be made does not reside five hundred miles or more from me.

Cecil C. Rotsch

CECIL C. ROTSCH
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